

# General Terms and Conditions of Sale/Delivery

Richard Bergner Group

Status: March 2022



## Section 1: Scope

1. These General Terms of Sales and Delivery apply to entrepreneurs, legal entities under public law and special assets under public law.

2. All deliveries, services and offers from us are exclusively based on these General Terms of Sales and Delivery. These are part of all the contracts RIBE concludes with our contractual partners (hereinafter referred to as "customer/s") for the deliveries and services offered to them. They also apply for all future deliveries, services or offers to the customer, even if they have not been separately agreed again as well as if RIBE delivers the goods in the knowledge of deviating or contradictory conditions.

3. Terms and conditions of business from our customers or third parties will not be applicable, even if we do not contradict them separately in each individual case. Even if we refer to a letter which contains the customer's or a third party's terms and conditions of business or refers to suchlike, this does not denote agreement with the validity of these terms and conditions of business.

## Section 2: General provisions

1. The parties to the contract will confirm oral agreements in writing without delay separately. In as far as these Terms and Conditions of Purchase plan or require the written form, the text form (§ 126b BGB [German Civil Code]) suffices for ensuring the written form requirement.

2. Orders will only become binding with our order confirmation. If the order from the customer deviates from the order, RIBE is only obliged if RIBE has agreed to the deviation in writing.

3. The specifications and illustrations contained in brochures and catalogues show approximate values which are normal for this sector unless expressly described by us as binding.

4. We are entitled to also cancel the customer's call-offs and orders placed based on contracts as well as the fulfilment of existing contracts and individual contracts and to refuse to extend them if it becomes recognisable that our entitlement to payment would be endangered due to the customer's inability to pay.

This is in particular the case if the customer's creditworthiness is evaluated by our credit reference agency with poor or deteriorating creditworthiness. The rulings contained in these regulations regarding extraordinary termination (Section 1, fig. 6), delayed payment and violation of duty as well as Section 321 BGB [German Commercial Code] and further statutory rights to refuse performance and rights of retention remain unaffected.

5. Should individual parts of these General Terms of Sales and Delivery be or become invalid, this will not influence the remaining provisions.

6. RIBE is entitled to terminate the agreement for good cause without notice. Good cause is deemed to exist in particular if, after conclusion of the contract, it becomes apparent that

our payment claims substantiated under the contract are endangered by the customer's lack of ability to perform and the customer, despite being requested to do so, fails to credibly insure its ability to perform within a reasonable period of time. Statutory termination and withdrawal rights remain unaffected.

7. RIBE is entitled to employ third parties to meet its duties. RIBE guarantees the customer that the products manufactured and delivered by third parties meet the respective agreed quality standards.

8. RIBE reserves the right to deliver technically equivalent or higher-value products comparable to those ordered and confirms that it will deliver these for the same price.

## Section 3: Orders, long-term and call-off contracts and price adjustment

1. Orders must be placed in writing. If the order represents an offer, we are entitled to accept it within a period of 2 weeks.

2. Contracts and individual contracts with an unlimited term or a term exceeding 10 years ("long-term contracts") can be terminated by us, unless otherwise agreed, by giving 3 months' notice to the end of the year.

3. If no binding order quantity is agreed, we use the expected, non-binding order quantity (target quantity) from the customer for a specified period as a basis for our calculation.

If the customer uses less than the target quantity, we are entitled to increase the unit price reasonably.

4. In the case of call-off delivery contracts, we must be notified of binding quantities by call at least 16 weeks prior to the delivery date by call-off unless otherwise agreed.

Additional costs caused by delayed call-off or subsequent changes regarding time or quantities by our customer is borne by him, unless he is not responsible for the delay or subsequent change; in this case our calculation is decisive.

## Section 4: Delivery and delivery period

1. Deliveries are made ex-works.

2. Deadlines and dates for deliveries and service named by us are always approximate unless a fixed date or delivery is expressly promised or agreed. In as far as dispatch has been agreed, the delivery periods and delivery dates refer to the point in time of handover to the forwarding agent, freight carrier or other third party commissioned with the transportation.

3. Notwithstanding its rights from delay by the customer, RIBE can demand a reasonable extension of the delivery and services periods from the customer or a shift by the period in which the customer does not meet his contractual duties vis-à-vis RIBE, for example delayed transmission of necessary information or documents, the provision of the necessary official certificates or approvals or the payment of a down payment. The defence of non-performance of the contract remains reserved.

4. If the customer is in default of acceptance or if a delay occurs due to any other culpable breach of obligations on the part of the customer, RIBE is entitled to demand compensation for the damages incurred by RIBE. The risk of accidental deterioration and accidental loss passes to the contractual partner upon occurrence of default of acceptance.

5. RIBE is not liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. riots, warlike or terrorist conflicts, operational disruptions of any kind, difficulties in procuring materials or energy, transport delays or defaults, strikes, lawful lock-outs, lack of labour, energy or raw materials, difficulties in procuring necessary official approvals, official measures such as "lockdowns" or plant closures due to a pandemic/ quarantine orders) for which we are not responsible. In particular, RIBE shall not be responsible for circumstances that are beyond the control of RIBE and for whose failure RIBE could not have provided a covering or procurement alternative at reasonable economic expense.

RIBE shall inform the customer without delay of its own performance difficulties or disruptions in the supplier area. If such events make delivery or performance considerably more difficult or impossible for us and the hindrance is not only of a temporary nature, RIBE is entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or service deadlines are extended or the delivery or service dates are postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the late delivery or service subsequent to the delay, he may withdraw from the contract by immediate written declaration to RIBE.

If the costs of RIBE's deliveries/ services change, in particular as a result of rising prices for raw materials, freight or energy, to an extent that was not foreseeable at the time of the order, and thus the basis for the contractual cooperation changes, the parties shall enter into negotiations in order to adjust the prices to the changed circumstances in the interest of the performance of the cooperation. If no agreement can be reached, RIBE shall be entitled to terminate the agreement.

If, within the cooperation individual parts of the service are affected by disruptions within the meaning of the above provisions, partial withdrawals are also possible.

6. Manufacturing-related excess deliveries or short deliveries within a tolerance of up to 5.00% of the overall order quantity are permissible. The overall price is changed in accordance with their scope. Otherwise, RIBE is only entitled to partial delivery if

a) Partial delivery can be used within the scope of the contractual purpose of use

b) Delivery of the remaining goods is secured

c) This cause the customer no considerable extra work or additional costs

7. If RIBE is in default with a delivery or service or if a delivery or service becomes impossible for us, for any reason whatsoever, our liability

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is limited to damages in accordance with Section 9 of these General Terms of Sales and Delivery.

## Section 5: Transfer of risk and dispatch

1. The place of performance for all duties arising from the contractual relationship is Schwabach, Germany in as far as nothing is determined to the contrary. If RIBE is also responsible for the installation, the place of performance is the place where the installation is to be made.

2. The mode of dispatch and the packaging are subject to our prudent judgement.

3. In case of dispatching, the risk passes to the customer at the latest when the delivery item is handed over to the forwarding agent, freight carrier or other third party designated to carry out the shipment (whereby the start of the loading process is decisive). This is also valid, if partial deliveries are made or we have taken over the installation without an acceptance having to take place. If dispatch or handover is delayed due to a circumstance caused by the customer, the risk is valid from the day on which the delivery item is ready for dispatch and RIBE has notified the customer of this.

This shall not apply, if the customer has to accept/ give an approval for shipment. In this case, the risk with regard to the delivery item or parts to be delivered shall already pass to the customer upon delivery to the customer for such damage/ destruction which has its cause in the sphere of the customer.

4. Storage costs following risk transfer are borne by the customer. If stored by the RIBE, the storage costs are 0.25% of the invoice amount of the delivery items to be stored per full week of storage. Enforcement and proof of further or lower storage costs remain reserved.

5. The consignment is only insured by RIBE at the customer's express wish and expense against theft, breakages, transport, fire and water damages or other insurable risks.

6. In as far as approval must be given, the purchased item is deemed approved if

a) the delivery and, in as far as we also have to carry out the installation, installation has been completed

b) RIBE has informed the customer of this and requested approval whilst referring to fictitious acceptance

c) twelve working days have elapsed since delivery and installation and the customer has started to use the purchased item (e.g. has commissioned the system delivered) and in this case six working days have elapsed since delivery or installation and

d) the customer has deferred approval within this period of time for a reason different to a defect notified to us, which makes use of the purchased item impossible or impedes it significantly.

## Section 6: Prices and payment

1. The prices are valid for the scope of performance and delivery listed in the order confirmations. Extra or special performance is

charged additionally. The prices are ex-works and in euros excluding packaging, VAT at the current statutory rate, in case of export deliveries customs duties and fees and further public charges.

2. In as far as the agreed prices are based on our list prices and delivery is planned only four months after conclusion of the contract, RIBE's valid list prices upon delivery are valid (respectively minus an agreed percentage or fixed discount).

3. Invoice amounts must be paid within 14 days with no deductions in as far as not agreed differently in writing. The payment date is deemed to be the date when we receive payment. Payment by cheque is excluded unless agreed extra in isolated cases. If the customer does not pay when payment is due, the amounts due will be interest-bearing as of the date following the due date in accordance with Section 288 BGB [German Civil Code]; enforcement of higher interest rates and further damages in case of delay remains unaffected.

4. Offsetting against the customer's counterclaims or withholding of payments of such claims is only permitted if the counterclaims are undisputed or have been legally established or result from the same order under which the relevant delivery was made.

5. We are entitled to only carry out or provide outstanding deliveries or services against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the customer's creditworthiness (Section 2 para. 4) and as a result of which payment of our outstanding claims by the customer from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is jeopardised.

6. An administration fee of 75.00 euros will be charged for orders with an order value of less than 300.00 euros (net goods value).

7. Price changes without prior notification remain reserved.

8. Claims against RIBE may only be assigned with written agreement by RIBE. RIBE is entitled to assign claims against the contractual partner to third parties.

## Section 7: Liability for defects

1. The state of the goods is based exclusively on the agreed technical delivery regulations. If we have to deliver according to our customer's drawings, specifications, samples etc., he will assume the risk of suitability for the intended use. The point in time of passing of risk is decisive for the contractual condition in accordance with Section 5 of these General Terms of Sales and Delivery.

2. For our deliveries, we adhere to the respective legally valid regulations of the European Union (EU) and the Federal Republic of Germany. This is valid, for example – in as far as it is pertinent – for the REACH Regulation (EC Regulation no. 1907/2006), the German Electrical and Electronic Equipment Act, (ElektroG), the German Electrical and Electronic Equipment - Materials Regulation (ElektroStoffV), the Waste Electrical and Electronic Equipment Treatment Regulation (EAG-

BehandV) and the German End-of-life Vehicle Regulations (AltfahrzeugV) as German implementations of the EU Directives 2011/65/EU (RoHS 2), 2012/19/EU (WEEE Directive) as well as Directive 2000/53/EC.

We will inform the customer of any relevant changes to the goods, delivery capacity, potential application or quality caused by legal regulations, in particular by the REACH Regulation and coordinate suitable measures with the customer in isolated cases.

3. We are neither liable for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, normal wear and tear, faulty or negligent treatment, nor for the consequences of improper modifications or repair work carried out by the customer or third parties without our consent. This also applies to defects which only reduce the value or suitability of the goods inconsiderably.

4. Claims for material defects become statute-barred in 12 months. This does not apply in as far as statutory regulations prescribe longer periods, in particular for defects in a building and for goods which have been used for a building in accordance with their normal use and caused its defectiveness. Sentence 1 of this provision also neither applies to damages resulting from injury to life, limb or health nor the event of intent or gross negligence or any other breach of essential contractual duties (these are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely) of our legal representatives or executive employees and to any obligation to reimburse the expenses required for the purpose of subsequent performance in accordance with Section 439 para. 3 BGB [German Civil Code].

5. The items delivered must be carefully examined without delay after delivery to the customer or the third party stipulated by him. With regard to obvious defects or other defects which would have been recognisable in an immediate, careful inspection, they are deemed to have been approved by the customer if we do not receive a written notification of defects within seven working days of delivery. With regard to other defects, the delivery items are deemed to have been approved by the customer if the complaint is not received by us within seven working days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier point in time is decisive for the start of the complaint period. If demanded by RIBE, a rejected delivery item must be returned to us carriage paid. In the event of a justified notice of defect, RIBE reimburses the costs for the cheapest shipping means; this will not apply if the costs increase because the delivery item is not at the location of its intended use.

6. In the event of material defects in the delivered items, RIBE is obliged and entitled to choose between repair or substitute delivery within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the client may withdraw from the contract or reduce the purchase price appropriately.

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7. The customer's rights of statutory recourse against us only exist in as far as the customer has made no agreement with his customer which goes beyond the extent of statutory claims for defects.

8. If a defect is culpably caused by RIBE, the customer can demand compensation for damages under the prerequisites determined in Section 9.

9. In case of defects in components from other manufacturers, which RIBE is unable to rectify due to statutory licensing law or factual reasons, RIBE will, at its discretion, either assert its warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the customer. Warranty claims against us for such defects exist under the other conditions and in accordance with these General Terms and Conditions of Sale and Delivery only if the legal enforcement of the above-mentioned claims vis-à-vis the manufacturer and supplier was unsuccessful or, for example, makes no sense due to insolvency. The period of limitation for the customer's warranty claims is suspended vis-à-vis us during the course of the legal dispute.

10. An isolated delivery of used items agreed with the customer is made under exclusion of any warranties for material defects.

## Section 8: Patent rights

1. In accordance with this Section 8, RIBE guarantees that the delivery item is free of industrial property rights and third-party copyrights unless the customer has provided the relevant drawings, specifications, samples, etc. Each party to the contract will inform the other contract partner in writing without delay if claims are asserted against him due to the breach of such rights.

2. In the event that RIBE is liable according to Section 8 para. 1, RIBE will, at its discretion and at its expense, either modify or replace the delivery item in such a way that no third-party rights are infringed any longer, the delivery item continues to fulfil the contractually agreed functions, or provide the right of use for the customer by concluding a licence agreement with the third party. If RIBE does not succeed in doing this within a reasonable period, the customer is entitled to withdraw from the contract or reduce the purchase price reasonably. Any claims for damages by the customer are subject to the restrictions of Section 9 of these General Terms of Delivery.

3. In case of infringements of rights by products from other manufacturers, supplied by RIBE, RIBE will, at its discretion, either assert its warranty claims against the manufacturers and pre-suppliers for the account of the customer or assign them to the customer. In such cases, claims against us for such defects will only exist in accordance with the provisions of this Section 8 if the legal enforcement of the above-mentioned claims vis-à-vis the manufacturers and sub-suppliers was unsuccessful or, for example, makes no sense due to insolvency.

## Section 9: Liability for compensation due to culpability

1. RIBE's liability for damages, regardless of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery,

breach of contract, breach of obligations during contract negotiations and tort, is limited in accordance with the provisions of this Section 9, in as far as culpability is involved.

2. RIBE is not liable in the event of simple negligence on the part of its bodies, legal representatives, employees or other vicarious agents, in as far as this does not constitute a breach of material contractual obligations. Essential contractual obligations include the duty of timely delivery and (as far as agreed on) installation of the delivery item, its freedom from defects of title and such material defects which impair its functionality or usability more than only insignificantly, as well as consulting, protection and care obligations which are intended to enable the customer to use the delivery item in accordance with the contract or to protect life and limb of the customer's staff or to protect the customer's property against considerable damage.

3. In as far as RIBE is liable for damages on its merits pursuant to Section 9, no. 2, this liability is limited to damages which RIBE anticipated as a possible consequence of a breach of contract when the contract was concluded or that it should have anticipated if it had exercised due diligence. Moreover, direct and subsequent damages which are the consequence of defects in the delivery item, can only be replaced in as far as such damages can be typically expected if the delivery item is used in the manner intended.

4. In the event of liability due to simple negligence, RIBE's obligation to pay compensation for property damage and any resulting further financial losses is limited to an amount of 500,000.00 euros for each event of damage, even if it involves a breach of essential contractual obligations.

5. The above exclusions and limitations of liability apply to the same extent to the bodies, legal representatives, employees and other vicarious agents of RIBE.

6. In as far as RIBE provides technical information or acts in an advisory capacity and this information or advice is not constituent of the contractually agreed scope of services owed by RIBE, it is provided free of charge and to the exclusion of all liability.

7. The restrictions of this Section 9 do not apply to the liability of RIBE for intentional conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

## § 10 Reservation of all rights

We reserve the ownership and copyright for offers submitted by us as well as for drawings, illustrations, calculations, descriptions and further documents provided from us. The customer may neither provide third parties access to them nor use them via third parties or reproduce them without our express agreement. He must return these documents to us in full upon our request, if they are no longer required for ordinary business activities or if negotiations do not result in the conclusion of a contract. Copies of these made by the customer must be destroyed in this case; only retention within the scope of statutory retention duties and the storage of data for backup purposes within the scope of normal data storage are excluded from this.

## Section 11: Confidentiality

1. The customer will use all documents (including samples, models and data) and knowledge gained from the business relationship only for the jointly pursued purposes and keep them confidential from third parties with the same care as his own documents and knowledge, if we have designated them as confidential or have an obvious interest in keeping them confidential.

This duty begins from initial receipt of documents or knowledge and ends 36 months after the end of the business relationship.

2. The duty does not apply to documents and knowledge which are generally known or which were already known to the customer upon receipt without the customer being obliged to maintain secrecy, which are subsequently transmitted by a third party authorised to pass them on, or which are developed by the customer without using documents or knowledge of our company which must be kept confidential.

The rulings of the German Business Secret Protection Act (GeschGehG) remain unaffected.

## Section 12: Retention of title

1. RIBE reserves the right of ownership of the goods delivered until all claims from the business relationship with the customer are fulfilled.

2. The customer is entitled to sell these goods within the course of regular business as long as he meets his duties from the business relationship with us in good time. However, he may neither pledge nor assign reserved goods as a security. He is obliged to secure our rights reselling credited reserved goods.

3. In the event of breaches of duty on the part of the customer, in particular default in payment, we are entitled to withdraw from the individual contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the customer to perform; the statutory provisions on the dispensability of setting a deadline remain unaffected. The customer is obliged to return the goods.

4. All claims and rights arising from the sale or, if applicable, rental of goods permitted to the customer whereby RIBE is entitled to property rights, are hereby already now assigned to RIBE by the customer as security. RIBE herewith accepts the assignment.

5. The customer always carries out any machining or processing of the reserved goods on our behalf. If the reserved goods are processed or inseparably mixed with other objects not belonging to us, we will acquire co-ownership of the new object in the ratio of the invoice value of the reserved goods to the other processed or mixed objects at the point in time of processing or mixing. If our goods are combined or inseparably mixed with other movable objects to form a uniform object and if the other object is to be regarded as the main object, the customer will transfer us proportional co-ownership in as far as the main object belongs to him. The customer keeps the property or co-ownership for us. Moreover, the same applies to the object arising from machining or mixing as for the reserved goods.

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6. The customer must inform us without delay of enforcement measures by third parties against the reserved goods, the claims assigned to us or other securities, handing over the documents necessary for intervention. This is also valid in case of impairments of any other nature.

7. If the value of the existing securities exceeds the secured claims by a total exceeding 10.00%, we are obliged upon the customer's request to release securities at our choice.

8. The customer shall treat the reserved goods with care, insure them appropriately and, if necessary, maintain them.

## **Section 13: Supplementary provisions**

In as far as rulings are missing in these General Terms of Sales and Delivery, the statutory regulations apply.

## **Section 14: Final provisions**

1. The laws of the Federal Republic of Germany will apply for these General Terms and Conditions of Sale and Delivery and the contractual relationship between RIBE and the customer, excluding the UN Sales Convention and Private International Law.

2. The exclusive - also international competent court of jurisdiction for all disputes arising from this contractual relationship is RIBE's registered office in Schwabach, Germany. However, RIBE is also entitled to take legal action at the place of performance of the supply obligation in accordance with these General Terms of Sales and Delivery or a prioritised individual agreement or at the supplier's place of general jurisdiction. Priority statutory provisions, in particular regarding exclusive competences, remain unaffected.

3. Should any provision be or become ineffective or unenforceable in total or in-part, this will not affect the validity of the remaining provisions. This also applies if and to the extent which a gap becomes apparent in this contract. In place of the invalid or unenforceable provision or to fill the gap, an appropriate provision should apply which, as far as legally possible, corresponds to the meaning and purpose of the invalid or unenforceable provision or the presumed intention of the parties, if they had considered this item.

4. These provisions are drawn up in German and English; in case of variances, the German version will take precedence.